

1 CENTER FOR DISABILITY ACCESS
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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15
16 **Rafael Arroyo**

17 Plaintiff,

18 v.

19 Let It Flho, LP, a Delaware Limited
20 Partnership;

21 Let It Flho Lessee, Inc., a
22 Delaware Corporation;

23 Defendants,

24
25 **Case No.**

26
27 **Complaint For Damages And
28 Injunctive Relief For
Violations Of: Americans With
Disabilities Act; Unruh Civil
Rights Act**

29 Plaintiff Rafael Arroyo complains of Let It Flho, LP, a Delaware Limited
30 Partnership; Let It Flho Lessee, Inc., a Delaware Corporation; (“Defendants”),
31 and alleges as follows:

32
33 **PARTIES:**

34 1. Plaintiff is a California resident with physical disabilities. He is
35 substantially limited in his ability to walk. He is a paraplegic. He uses a
36 wheelchair for mobility.

1 2. Defendant Let It Flho, LP, a Delaware Limited Partnership, owns the
2 Villa Florence San Francisco on Union Square located at 225 Powell St., San
3 Francisco, California currently and at all times relevant to this complaint.
4 Defendant Let It Flho Lessee, Inc., a Delaware Corporation operates the Hotel
5 currently and at all times relevant to this complaint.

6 3. Plaintiff does not know the true names of Defendants, their business
7 capacities, their ownership connection to the property and business, or their
8 relative responsibilities in causing the access violations herein complained of,
9 and alleges a joint venture and common enterprise by all such Defendants.
10 Plaintiff is informed and believes that each of the Defendants herein, is
11 responsible in some capacity for the events herein alleged, or is a necessary
12 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
13 the true names, capacities, connections, and responsibilities of other
14 Defendants are ascertained.

15

16 **JURISDICTION:**

17 4. The Court has subject matter jurisdiction over the action pursuant to 28
18 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
19 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

20 5. Pursuant to supplemental jurisdiction, an attendant and related cause
21 of action, arising from the same nucleus of operative facts and arising out of
22 the same transactions, is also brought under California's Unruh Civil Rights
23 Act, which act expressly incorporates the Americans with Disabilities Act.

24 6. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
25 founded on the fact that the real property which is the subject of this action is
26 located in this district and that Plaintiff's cause of action arose in this district.

1 **PRELIMINARY STATEMENT**

2 7. This is a lawsuit challenging the reservation policies and practices of a
3 place of lodging. Plaintiff does not know if any physical or architectural
4 barriers exist at the hotel and, therefore, is not claiming that that the hotel has
5 violated any construction-related accessibility standard. Instead, this is about
6 the lack of information provided on the hotel's reservation website that would
7 permit plaintiff to determine if there are rooms that would work for him.

8 8. After decades of research and findings, Congress found that there was
9 a "serious and pervasive social problem" in America: the "discriminatory
10 effects" of communication barriers to persons with disability. The data was
11 clear and embarrassing. Persons with disabilities were unable to "fully
12 participate in all aspects of society," occupying "an inferior status in our
13 society," often for no other reason than businesses, including hotels and
14 motels, failed to provide information to disabled travelers. Thus, Congress
15 decided "to invoke the sweep of congressional authority" and issue a "national
16 mandate for the elimination of discrimination against individuals with
17 disabilities," and to finally ensure that persons with disabilities have "equality
18 of opportunity, full participation, independent living" and self-sufficiency.

19 9. As part of that effort, Congress passed detailed and comprehensive
20 regulations about the design of hotels and motels. But, as importantly,
21 Congress recognized that the physical accessibility of a hotel or motel means
22 little if the 61 million adults living in America with disabilities are unable to
23 determine which hotels/motels are accessible and to reserve them. Thus,
24 there is a legal mandate to provide a certain level of information to disabled
25 travelers.

26 10. But despite the rules and regulations regarding reservation procedures,
27 a 2019 industry article noted that: "the hospitality sector has largely
28 overlooked the importance of promoting accessible features to travelers."

1 11. These issues are of paramount important. Persons with severe
2 disabilities have modified their own residences to accommodate their unique
3 needs and to ameliorate their physical limitations. But persons with disabilities
4 are never more vulnerable than when leaving their own residences and having
5 to travel and stay at unknown places of lodging. They must be able to ascertain
6 whether those places work for them.

7

8 **FACTUAL ALLEGATIONS:**

9 12. Plaintiff planned on making a trip in June of 2021 to the San Francisco,
10 California, area.

11 13. He chose the Villa Florence San Francisco on Union Square located at
12 225 Powell St., San Francisco, California because this hotel was at a desirable
13 price and location.

14 14. Due to Plaintiff's condition, he is unable to, or seriously challenged in
15 his ability to, stand, ambulate, reach objects, transfer from his chair to other
16 equipment, and maneuver around fixed objects.

17 15. Thus, Plaintiff needs an accessible guestroom and he needs to be given
18 information about accessible features in hotel rooms so that he can confidently
19 book those rooms and travel independently and safely.

20 16. On January 15, 2021, while sitting bodily in California, Plaintiff went to
21 the Villa Florence San Francisco on Union Square reservation website at
22 <https://www.villaflorence.com/> seeking to book an accessible room at the
23 location.

24 17. This website reservation system is owned and operated by the
25 Defendants and permits guests to book rooms at Villa Florence San Francisco
26 on Union Square.

27 18. Plaintiff found that there was insufficient information about the
28 accessible features in the "accessible rooms" at the Hotel to permit him to

1 assess independently whether a given hotel room would work for him.

2 19. For example, Plaintiff cannot transfer from his wheelchair to a toilet
3 unless there are grab bars at the toilet to facilitate that transfer. But the Hotel
4 reservation website does not provide any information about the existence of
5 grab bars for the accessible guestroom toilets. This is critical information for
6 the plaintiff.

7 20. As another example, Plaintiff has had tremendous difficulty with using
8 lavatory sinks in the past because sinks were cabinet style sinks or had low
9 hanging aprons that did not provide knee clearance for a wheelchair user to
10 pull up and under or, alternatively, where the plumbing underneath the sink
11 was not wrapped with insulation to protect against burning contact to his
12 knees. Here, the Hotel reservation website provides no information about the
13 accessibility of the sinks in the accessible guestroom.

14 21. As another example, Plaintiff needs to know that the bed has a
15 compliant clear space next to it so he can safely transfer from his wheelchair to
16 the bed. Here the Hotel website provides no information about the
17 accessibility of the clear space next to the bed.

18 22. Plaintiff does not need an exhaustive list of accessibility features.
19 Plaintiff does not need an accessibility survey to determine if a room works for
20 him. Plaintiff, like the vast majority of wheelchair users, simply needs a
21 handful of features to be identified and described with a modest level of detail:

- 22 • For the doors, Plaintiff simply needs to know if he can get into the hotel
23 room and into the bathroom. This is a problem that has created
24 tremendous problems for the Plaintiff in the past. A simple statement
25 that the hotel room entrance and interior doors provide at least 32
26 inches of clearance is enough to provide Plaintiff this critical piece of
27 information about whether he can fit his wheelchair into the hotel
28 rooms.

- 1 • For the beds themselves, the only thing Plaintiff needs to know (and the
2 only thing regulated by the ADA Standards) is whether he can actually
3 get to (and into) the bed, i.e., that there is at least 30 inches width on the
4 side of the bed so his wheelchair can get up next to the bed for transfer.
5 This is critical information because Plaintiff cannot walk and needs to
6 pull his wheelchair alongside the bed.
- 7 • For the desk where Plaintiff will eat and work, Plaintiff simply needs to
8 know that it has sufficient knee and toe clearance so that he can use it.
9 A simple statement like “the desk provides knee and toe clearance that
10 is at least 27 inches high, 30 inches wide, and runs at least 17 inches
11 deep” is more than sufficient. Because Plaintiff is confined to a
12 wheelchair, he needs to know this information to determine if the desk
13 is accessible to and useable by him.
- 14 • For the restroom toilet, Plaintiff only needs to know two things that
15 determine if he can transfer to and use the toilet; (1) that the toilet seat
16 height is between 17-19 inches (as required by the ADA Standards) and
17 (2) that it has the two required grab bars to facilitate transfer.
- 18 • For the restroom sink, the Plaintiff two things that will determine
19 whether he can use the sink from his wheelchair: (1) can he safely get his
20 knees under the toilet? To wit: does the sink provide the knee clearance
21 (27 inches high, 30 inches wide, 17 inches deep) and is any plumbing
22 under the sink wrapped with insulation to protect against burning
23 contact? The second thing is whether the lavatory mirror is mounted at
24 a lowered height so that wheelchair users can sue it. A simple statement
25 like: “the lavatory sink provides knee clearance of at least 30 inches
26 wide, 27 inches tall and 17 inches deep, all of the under-sink plumbing
27 is wrapped, and the lowest reflective edge of the mirror is no more than
28 40 inches high” would suffice.

- 1 • Finally, for the shower, Plaintiff needs to know only a handful of things:
2 (1) what type of shower it is (transfer, standard roll-in, or alternate roll-
3 in), (2) whether it has an in-shower seat; (3) that there are grab bars
4 mounted on the walls; (4) that there is a detachable hand-held shower
5 wand for washing himself and (5) that the wall mounted accessories and
6 equipment are all within 48 inches height.

7 23. This small list of items are the bare necessities that Plaintiff must know
8 to make an independent assessment of whether the “accessible” hotel room
9 works for him. These things comprise the basics of what information is
10 reasonably necessary for Plaintiff (or any wheelchair user) to assess
11 independently whether a given hotel or guest room meets his or her
12 accessibility needs.

13 24. Other accessibility requirements such as slopes of surfaces, whether the
14 hand-held shower wand has a non-positive shut off valve, the temperature
15 regulator, the tensile strength and rotational design of grab bars, and so many
16 more minute and technical requirements under the ADA are beyond what is a
17 reasonable level of detail and Plaintiff does not expect or demand that such
18 information is provided.

19 25. But because the Defendants have failed to identify and describe the core
20 accessibility features in enough detail to reasonably permit individuals with
21 disabilities to assess independently whether a given hotel or guest room meets
22 his accessibility needs, the Defendants fail to comply with its ADA obligations
23 and the result is that the Plaintiff is unable to engage in an online booking of
24 the hotel room with any confidence or knowledge about whether the room will
25 actually work for him due to his disability.

26 26. This lack of information created difficulty for the Plaintiff and the idea
27 of trying to book this room -- essentially ignorant about its accessibility --
28 caused difficulty and discomfort for the Plaintiff and deterred him from

1 booking a room at the Hotel

2 27. Plaintiff travels frequently and extensively, not only for non-litigation
3 reasons but also because he is an ADA tester and actively engaged in finding
4 law breaking businesses and hauling them before the courts to be penalized
5 and forced to comply with the law.

6 28. As he has in the past, Plaintiff will continue to travel to the San Francisco
7 area on a regular and ongoing basis and will patronize this Hotel once it has
8 been represented to him that the Defendant has changed its policies to comply
9 with the law and to determine if the Hotel is physically accessible as well as
10 complying with required reservation procedures. Plaintiff will, therefore, be
11 discriminated against again, i.e., be denied his lawfully entitled access, unless
12 and until the Defendant is forced to comply with the law.

13 29. Plaintiff has reason and motivation to use the Defendant's Hotel
14 reservation system and to stay at the Defendant's Hotel in the future. Among
15 his reasons and motivations are to assess these policies and facilities for
16 compliance with the ADA and to see his lawsuit through to successful
17 conclusion that will redound to the benefit of himself and all other similarly
18 situated. Thus, Plaintiff routinely revisits and uses the facilities and
19 accommodations of places he has sued to confirm compliance and to enjoy
20 standing to effectuate the relief promised by the ADA.

21

22 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
23 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
24 Defendants.) (42 U.S.C. section 12101, et seq.)

25 30. Plaintiff re-pleads and incorporates by reference, as if fully set forth
26 again herein, the allegations contained in all prior paragraphs of this
27 complaint.

28 31. Under the ADA, it is an act of discrimination to fail to make reasonable

1 modifications in policies, practices, or procedures when such modifications
2 are necessary to afford goods, services, facilities, privileges advantages or
3 accommodations to person with disabilities unless the entity can demonstrate
4 that taking such steps would fundamentally alter the nature of those goods,
5 services, facilities, privileges advantages or accommodations. See 42 U.S.C. §
6 12182(B)(2)(A)(ii).

7 32. Specifically, with respect to reservations by places of lodging, a
8 defendant must ensure that its reservation system, including reservations
9 made by “any means,” including by third parties, shall:

- 10 a. Ensure that individuals with disabilities can make
11 reservations for accessible guest rooms during the same
12 hours and in the same manner as individuals who do not
13 need accessible rooms;
- 14 b. Identify and describe accessible features in the hotels and
15 guest rooms offered through its reservations service in
16 enough detail to reasonably permit individuals with
17 disabilities to assess independently whether a given hotel
18 or guest room meets his or her accessibility needs; and
- 19 c. Reserve, upon request, accessible guest rooms or specific
20 types of guest rooms and ensure that the guest rooms
21 requested are blocked and removed from all reservations
22 systems.

23 *See 28 C.F.R. § 36.302(e).*

24 33. Here, the defendant failed to modify its reservation policies and
25 procedures to ensure that it identified and described accessible features in the
26 hotels and guest rooms in enough detail to reasonably permit individuals with
27 disabilities to assess independently whether a given hotel or guest room meets
28 his or her accessibility needs and failed to ensure that individuals with

1 disabilities can make reservations for accessible guest rooms during the same
2 hours and in the same manner as individuals who do not need accessible
3 rooms.

4

5 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
6 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
7 Code § 51-53.)

8 34. Plaintiff repleads and incorporates by reference, as if fully set forth
9 again herein, the allegations contained in all prior paragraphs of this
10 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
11 that persons with disabilities are entitled to full and equal accommodations,
12 advantages, facilities, privileges, or services in all business establishment of
13 every kind whatsoever within the jurisdiction of the State of California. Cal.
14 Civ. Code § 51(b).

15 35. The Unruh Act provides that a violation of the ADA is a violation of the
16 Unruh Act. Cal. Civ. Code, § 51(f).

17 36. Defendants’ acts and omissions, as herein alleged, have violated the
18 Unruh Act by, *inter alia*, failing to comply with the ADA with respect to its
19 reservation policies and practices.

20 37. Because the violation of the Unruh Civil Rights Act resulted in difficulty
21 and discomfort for the plaintiff, the defendants are also each responsible for
22 statutory damages, i.e., a civil penalty. *See* Civ. Code § 52(a).

23

24 **PRAYER:**

25 Wherefore, Plaintiff prays that this Court award damages and provide
26 relief as follows:

27 1. For injunctive relief, compelling Defendants to comply with the
28 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the

1 plaintiff is not invoking section 55 of the California Civil Code and is not
2 seeking injunctive relief under the Disabled Persons Act at all.

3 2. Damages under the Unruh Civil Rights Act, which provides for actual
4 damages and a statutory minimum of \$4,000 for each offense.

5 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
6 to 42 U.S.C. § 12205; and Cal. Civ. Code § 52(a).

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8

9 Dated: February 16, 2021

CENTER FOR DISABILITY ACCESS



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11 By: _____
12 Russell Handy, Esq.
13 Attorneys for Plaintiff
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